

Centek Ltd & Ors v Farrah Dheebe bt Shaiful Ridzuan & Ors A

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22IP-74–11 OF
2019

AHMAD KAMAL J

25 JANUARY 2021

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Civil Procedure — Injunction — Interim injunction — Plaintiffs sought to restrain defendants from disclosing or using confidential information — Whether application ought to be granted

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Civil Procedure — Setting aside — Application to set aside ex parte order — Defendants applied to set aside ex parte order obtained by plaintiffs — Whether plaintiffs failed to show extremely strong prima facie case on merits — Whether plaintiffs had not clearly pleaded confidential information — Whether plaintiffs failed to disclose material facts — Whether plaintiffs failed to comply with minimum standards and guidelines for contents and execution of Anton Piller orders — Whether plaintiffs had not provided undertaking as to damages

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The plaintiffs were related companies which collectively form Centek Group of Companies in the United Kingdom ('Centek Group'). Centek Group was involved in the business of manufacturing centralisers and stop collars for the oil and gas industries. Centek Group had amassed and owned various trade secrets and proprietary information in relation to its business, products and customers. Such information was confidential in nature, and included the documents particularised in Schedule A ('the confidential information'). The plaintiffs employed Tristram Giles ('Giles') in the United Kingdom where Giles was entrusted with various confidential information by the plaintiffs. Giles left the employment of the plaintiff on 16 August 2019. On assessing Centek's email account, the plaintiff discovered that Giles had been emailing confidential information to various personal and third party email addresses between December 2018–August 2019. Centek Group accordingly commenced suit in the High Court of England and Wales against Giles claiming, inter alia, that Giles had been in breaches of contract and/or confidence ('the UKHC proceedings'). Centek Group filed and obtained an ex parte order in the UKHC proceedings ('the UKHC order') which amongst other things required Giles to deliver up various devices which many contain confidential information to be imaged by information technology ('IT') experts to preserve evidence. The IT experts were able to recover various materials pursuant to the UKHC order including WhatsApp messages between Giles and the defendants which showed that confidential information was

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A wrongfully disclosed to and misused by the said defendants. In the result, Centek Group commenced these proceedings against the defendants based on various pleaded cause of action in the statement of claim. On 3 December 2019 this court had granted an ex parte order ('encl 3') for various relief against the defendants. The defendants then filed a notice of application ('encl 22') to
B set aside the ex parte order. The plaintiffs also made an inter parte application for interim injunction to restrain the defendants from disclosing or using the confidential information, until trial or further order, vide prayer (3) of encl 3.

Held, allowing the plaintiffs' encl 3 and dismissing the defendants' encl 22:

- C (1) The plaintiffs' affidavit in support was validly affirmed in accordance with O 41 r 12 of the Rules of Court 2012 ('the ROC 2012'). Micheal BG Cosgrove, a solicitor of England/Wales, was a person having authority to administer oath in the Commonwealth country, having
D being empowered under r 8.1 of the Solicitors Regulation Authority (SRA) Practice Framework Rules 2011. Secondly, there was no tampering of the plaintiffs' affidavit in support. The plaintiffs had given a bona fide and credible explanation as to why there were two different dates of 20 November 2019 and 22 November 2019. Thirdly, the cases
E cited by the defendants in submitting that the affidavits in support which was affirmed in United Kingdom was defective because it was not filed in the national language were no longer represent the current state of the law in Malaysia. Fourthly, O 63A r 7(4) of the ROC 2012 allowed the
F plaintiff to file the affidavit in support manually and need not be filed through electronic filing. The plaintiffs' affidavit dated 22 November 2020 was never filed electronically as there was a need to preserve confidentiality of the documents. The question of any breach of any rule in O 63A of the ROC 2012 pertaining to electronic filing did not arise. Lastly, the filing or service of ad interim order were a non-starter as this
G was not an application to enforce the said ad interim orders against the defendants. In conclusion, none of the procedural objections raised by the defendants had any merits and accordingly the said procedural objections was dismissed (see paras 20, 24, 26–27, 34, 40, 44 & 47–49).
- H (2) The plaintiffs had shown that it had a strong prima facie case on merits against the defendants for amongst, others, for breach of confidence. Exhibit A10 were documents in the form of drawing recovered under the order ('the offending article'). The offending article had been wrongfully copied or produced by the wrongful use of the plaintiffs' confidential information and this amounted to clear misuse of confidential
I information. The said misuse was in fact unanswered by the defendants. The WhatsApp conversations between the defendants' showed that each and every one of them were connected to each other towards the common design involving Giles and the various causes of action pleaded against them. The defendants had misused the confidential information

- for their own purposes to unlawfully ‘expedite’ their contemplated business in Malaysia and therefore the plaintiffs had sufficiently proved an extremely strong prima facie on the merits (see paras 53, 58, 62–63, 70 & 76). A
- (3) The plaintiffs had sufficiently particularised and pleaded all that was necessary based on the best available information. The plaintiffs had pleaded all of the matters in its statement of claim. This was further fortified by the defence and counterclaim filed by the defendants, together with the various affidavits filed for encls 3 and 22. The defendants’ challenge on the alleged insufficiency of the particulars of the confidential information was misconstrued. The statement of claim prepared in the instant case was fully detailed, and set out all of the material facts that were known to the plaintiffs (see paras 77, 80, 82 & 87). B C
- (4) The defendants’ complaint of non-disclosure was unsustainable. This was because the facts allegedly not disclosed were disclosed and/or were not material facts in that it would not have affected the granting or otherwise of the order. The alleged facts concerned were not of such severity, relative to what the evidence had revealed thus far about the defendants’ wrongdoing. The defendants had misused the plaintiffs’ confidential information and this was clearly borne out of evidence recovered under the order (see paras 89 & 96). D E
- (5) The supervising solicitors had not at any material times acted in excess of the order. As stated in the SS report, all processes including the review and extraction of data was undertaken with the presence, participation and even the agreement of the defendants’ solicitors by, inter alia, the consent form. Therefore, the defendants were estopped from contending that the review and extraction were outside the scope of the order by virtue of their participation and agreement to the said processes (see paras 101–102). F G
- (6) The plaintiffs had not merely given a verbal undertaking to the court as to damages but that undertaking was recorded in writing in the order itself. If the defendants had any issue pertaining to the adequacy of the undertaking, the defendants must show sufficient cause and need to file the necessary applications as were permitted under the law. However, the only pending applications before the court were in encls 3 and 22 herein. Thus, there was no legitimate challenge or application as to the adequacy or otherwise of the undertaking as to damages given. The act of copying and imitating of the confidential information and the defendants’ conduct and position in this suit amounted to evidence that the defendants were likely to be untrustworthy or lacked probity. In view of the aforesaid, a very serious damage would be occasioned on the plaintiffs if the order had not been granted or set aside. Thus, the order was rightly H I

- A issued after taken into account circumstances of the case. Notwithstanding that the order was a less-drastic form of an Anton Piller order, the plaintiffs had at all material times satisfied and fulfilled the most stringent of tests for Anton Piller orders (see paras 104, 105, 114–115 & 118).
- B (7) The facts and arguments clearly showed that the test in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 was met, in favour of granting the injunction sought by the plaintiffs (see para 122).
- C **[Bahasa Malaysia summary]**
- D Plaintiff adalah syarikat berkaitan yang secara kolektif membentuk Syarikat Centek Group di United Kingdom ('Centek Group'). Centek Group terlibat dalam perniagaan pembuatan *centralisers* dan *stop collars* untuk industri minyak dan gas. Centek Group telah mengumpulkan dan memiliki pelbagai rahsia perdagangan dan maklumat hak milik berkaitan dengan perniagaan, produk dan pelanggannya. Maklumat tersebut bersifat rahsia, dan termasuk dokumen yang dikhususkan dalam Jadual A ('maklumat rahsia'). Plaintiff memperkerjakan Tristram Giles ('Giles') di United Kingdom di mana Giles diberi kepercayaan dengan pelbagai maklumat sulit oleh plaintiff. Giles meninggalkan pekerjaan dengan plaintiff pada 16 Ogos 2019. Semasa menilai akaun emel Centek, plaintiff mendapati bahawa Giles telah menghantar emel maklumat sulit ke pelbagai alamat emel peribadi dan pihak ketiga antara
- E Disember 2018–Ogos 2019. Centek Group dengan itu memulakan saman di Mahkamah Tinggi England dan Wales terhadap Giles yang mendakwa, antara
- F lain, bahawa Giles telah melanggar kontrak dan/atau kerahsiaan ('prosiding UKHC'). Centek Group memfailkan dan memperoleh perintah ex parte dalam prosiding UKHC ('perintah UKHC') yang antara lain menghendaki
- G Giles menyerahkan pelbagai peranti yang mengandungi maklumat sulit untuk diimejkan oleh pakar teknologi maklumat ('IT') untuk menyimpan bukti. Pakar IT dapat memulihkan pelbagai bahan berdasarkan perintah UKHC termasuk mesej WhatsApp antara Giles dan defendan yang menunjukkan bahawa maklumat sulit telah didedahkan dan disalahgunakan oleh defendan
- H tersebut. Hasilnya, Centek Group memulakan prosiding ini terhadap defendan berdasarkan pelbagai kausa tindakan yang dihidkan dalam pernyataan tuntutan. Pada 3 Disember 2019, mahkamah ini telah memberikan perintah ex parte ('lampiran 3') untuk pelbagai relif terhadap defendan. Defendan kemudian memfailkan notis permohonan ('lampiran 22')
- I untuk mengetepikan perintah ex parte. Plaintiff juga membuat permohonan inter parte untuk injuksi interim bagi menahan para defendan daripada mendedahkan atau menggunakan maklumat sulit, sehingga perbicaraan atau perintah selanjutnya, melalui permohonan (3) lampiran 3.

Diputuskan, membenarkan lampiran 3 plaintif dan menolak lampiran 22 defendan:

- (1) Affidavit sokongan telah disahkan secara sah menurut A 41 k 12 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Micheal BG Cosgrove, peguam England/Wales, adalah orang yang mempunyai kuasa untuk melakukan sumpah di negara Komanwel, setelah diberi kuasa berdasarkan k 8.1 Solicitors Regulation Authority (SRA) Practice Framework Rules 2011. Kedua, tiada gangguan terhadap affidavit sokongan plaintif. Plaintif telah memberikan penjelasan bona fide dan boleh dipercayai mengapa terdapat dua tarikh berbeza pada 20 November 2019 dan 22 November 2019. Ketiga, kes-kes yang dikemukakan oleh defendan dalam menyatakan bahawa affidavit sokongan yang disahkan di United Kingdom adalah cacat kerana tidak difailkan dalam bahasa kebangsaan tidak lagi mewakili keadaan undang-undang di Malaysia sekarang. Keempat, A 63A k 7(4) KKM 2012 membenarkan plaintif memfailkan affidavit sokongan secara manual dan tidak perlu difailkan melalui pemfailan elektronik. Affidavit plaintif bertarikh 22 November 2020 tidak pernah difailkan secara elektronik kerana terdapat keperluan untuk menjaga kerahsiaan dokumen. Tidak timbul persoalan pelanggaran mana-mana peraturan dalam A 63A KKM 2012 yang berkaitan dengan pemfailan elektronik. Akhir sekali, pemfailan atau penyampaian perintah ad interim tidak berlaku kerana ini bukan permohonan untuk menguatkuasakan perintah ad interim terhadap defendan. Kesimpulannya, tidak ada satu pun bantahan prosedural yang dikemukakan oleh defendan mempunyai merit dan oleh itu, bantahan prosedural ditolak (lihat perenggan 20, 24, 26–27, 34, 40, 44 & 47–49).
- (2) Plaintif telah menunjukkan bahawa ia mempunyai kes prima facie yang kuat mengenai merit terhadap defendan kerana, antara lain, melanggar kepercayaan. Ekshibit A10 adalah dokumen dalam bentuk gambar yang dipulihkan berdasarkan perintah ('artikel yang melanggar'). Artikel yang melanggar telah disalin secara salah atau dihasilkan oleh penggunaan maklumat sulit plaintif yang salah dan ini berjumlah penyalahgunaan maklumat sulit. Penyalahgunaan tersebut sebenarnya tidak dijawab oleh defendan. Perbualan WhatsApp antara defendan menunjukkan bahawa masing-masing saling berhubung antara satu sama lain ke arah tujuan yang sama melibatkan Giles dan pelbagai kausa tindakan yang diplidkan terhadap mereka. Defendan telah menyalahgunakan maklumat sulit untuk tujuan mereka sendiri untuk secara salah 'mempercepatkan' perniagaan mereka di Malaysia dan oleh itu plaintif telah membuktikan dengan cukup satu prima facie yang kuat mengenai merit (lihat perenggan 53, 58, 62–63, 70 & 76).
- (3) Plaintif telah mengkhususkan dan memplid semua yang diperlukan

- A berdasarkan maklumat terbaik yang ada. Plaintiff telah memplid semua perkara dalam pernyataan tuntutan. Ini diperkuatkan lagi oleh pembelaan dan tuntutan balas yang difailkan oleh defendan, bersama dengan pelbagai affidavit yang difailkan untuk lampiran 3 dan 22.
- B Cabaran defendan mengenai dakwaan kekurangan butiran maklumat sulit adalah disalahertikan. Pernyataan tuntutan yang disediakan dalam kes ini telah diperincikan dengan lengkap, dan menyatakan semua fakta penting yang diketahui oleh plaintiff (lihat perenggan 77, 80, 82 & 87).
- C (4) Aduan defendan mengenai ketiadaan pendedahan tidak dapat dikekalkan. Ini kerana fakta yang didakwa tidak didedahkan telah didedahkan dan/atau bukan fakta material yang mana tidak akan mempengaruhi pemberian atau sebaliknya perintah itu. Fakta-fakta yang didakwa berkenaan tidak begitu berat, berkaitan dengan bukti yang telah dinyatakan sejauh ini mengenai kesalahan defendan. Defendan telah menyalahgunakan maklumat sulit plaintiff dan ini jelas ditunjukkan daripada bukti yang diperolehi di bawah perintah itu (lihat perenggan 89 & 96).
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- E (5) Peguam penyelia tidak bertindak melebihi perintah. Seperti yang dinyatakan dalam laporan SS, semua proses termasuk peninjauan dan pengekstrakan data dilakukan dengan kehadiran, penyertaan dan bahkan persetujuan peguam defendan dengan antara lain borang persetujuan. Oleh itu, defendan dihalang daripada berpendapat bahawa tinjauan dan pengekstrakan berada di luar skop perintah berdasarkan penyertaan dan persetujuan mereka terhadap proses tersebut (lihat perenggan 101–102).
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- G (6) Plaintiff tidak hanya memberikan akujanji lisan kepada mahkamah mengenai ganti rugi tetapi akujanji itu dicatat secara tertulis dalam perintah itu sendiri. Sekiranya defendan mempunyai masalah yang berkaitan dengan kecukupan akujanji tersebut, defendan harus menunjukkan alasan yang mencukupi dan perlu memfailkan permohonan yang diperlukan sebagaimana yang dibenarkan di bawah undang-undang. Walau bagaimanapun, satu-satunya permohonan yang belum selesai di mahkamah adalah di lampiran 3 dan 22 di sini. Oleh itu, tidak ada bantahan atau permohonan yang sah mengenai kecukupan atau sebaliknya berkenaan akujanji untuk ganti rugi yang diberikan.
- H Tindakan menyalin dan meniru maklumat sulit serta tingkah laku dan kedudukan defendan dalam saman ini merupakan bukti bahawa defendan kemungkinan tidak boleh dipercayai atau kekurangan integriti.
- I Dengan itu, kerugian yang sangat serius akan terjadi pada plaintiff jika perintah itu tidak diberikan atau diketepikan. Oleh itu, perintah itu dikeluarkan dengan tepat setelah mengambil kira keadaan kes tersebut. Walaupun perintah tersebut merupakan bentuk perintah Anton Piller yang kurang drastik, plaintiff pada setiap masa material berpuas hati dan memenuhi ujian yang paling ketat untuk perintah Anton Piller (lihat

perenggan 104, 105, 114–115 & 118).

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- (7) Fakta dan hujahan dengan jelas menunjukkan bahawa ujian dalam *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 telah dipenuhi, yang memihak kepada pemberian injuksi yang dipohon oleh plaintif (lihat perenggan 122).]

B

Cases referred to

Anton Piller KG v Manufacturing Processes Ltd and others [1976] 1 All ER 779, CA (refd)

Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331; [1995] 4 CLJ 283, FC (refd)

C

Cranleigh Precision Engineering Ltd v Bryant and Another [1964] 3 All ER 289, QBD (folld)

Diageo Ireland v My Flexitank Industries Sdn Bhd [2015] MLJU 1121; [2015] 1 LNS 1176, HC (refd)

D

Gilbert Engineering Co, Inc v Zainuddin bin Ahmad & Ors [2003] 6 MLJ 103, HC (dstd)

Juris Technologies Sdn Bhd & Anor v Foo Tiang Sin & Ors [2019] 12 MLJ 785; [2019] 9 CLJ 617, HC (refd)

E

Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193; [1994] 1 MLRA 454; [1995] 1 CLJ 293; [1995] 1 AMR 373, CA (folld)

Kingtime International Ltd & Anor v Petrofac E&C Sdn Bhd [2020] 11 MLJ 141; [2020] 1 CLJ 862, HC (refd)

F

Lock International plc v Beswick and others [1989] 1 WLR 1268 Ch D (refd)

Multi-Code Electronics Industries (M) Bhd & Anor v Gordon Toh Chun Toh & Ors [2009] 9 CLJ 659, HC (refd)

Noor Jahan bte Abdul Wahab v Md Yusoff bin Amanshah & Anor [1994] 1 MLJ 156; [1994] 2 CLJ 249, HC (refd)

G

Saltman Engineering Co Ltd and Others v Campbell Engineering Co Ltd [1963] 3 All ER 413, CA (folld)

Schmidt Scientific Sdn Bhd v Ong Han Suan [1997] 5 MLJ 632, HC (refd)

Svenson Hair Center Sdn Bhd v Irene Chin Zee Ling [2008] 7 MLJ 903; [2008] 8 CLJ 386, HC (folld)

H

Sykt Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd [1994] 2 MLJ 420, SC (dstd)

Tracerco Asia Sdn Bhd v Nor Hisham Mohd Nordin & Ors [2013] 7 MLJ 75, HC (folld)

Watermech Engineering Sdn Bhd & Anor v Novaviro Technology Sdn Bhd [2015] 3 MLJ 285; [2014] 9 CLJ 791, CA (refd)

I

Worldwide Rota Dies Sdn Bhd v Ronald Ong Cheow Joon [2010] 8 MLJ 297, HC (refd)

A Legislation referred to

Administration of Justice Act 1985 [UK]

Diplomatic and Consular Officers (Oaths and Fees) Act 1959 ss 2, 3(1)

Legal Services Act 2007 [UK]

Oaths and Affirmations Act 1949 s 5

B Rules of Court 2012 O 18 r 7, O 41 rr 7, 12, 13, O 63A, O 63A rr 7(1), (4), 9(1), 10(2)

Rules of the High Court 1980 O 41

Solicitors Act 1974 [UK]

C Solicitors Regulation Authority Practice Framework Rules 2011 r 8.1

Chew Kherk Ying (Yeoh Yao Huang with her) (Wong & Partners) for the plaintiffs.
Ahmad Ziadi bin Zaidon (M Firdaus with him) (Asiah & Hisam) for the defendants.

D Ahmad Kamal J:

INTRODUCTION

E [1] On 3 December 2019 this court had granted an ex parte order (encl 3) for various relief against the defendants. The defendants then filed a notice of application dated 31 December 2019 (encl 22) to set aside the ex parte order.

[2] The ex parte order dated 3 December 2019 (encl 3) reads as follows:

F A. PRESERVATION /INJUNCTIVE RELIEF

G 1. An Order to compel the Defendants and each of them, whether acting by itself or through its directors, officers, servants, agents, or otherwise howsoever, to deliver up to the supervising solicitors(s) and/or its authorized representative(s) immediately upon service of this Order, any computers, laptops, notebooks, tablets, mobile phones, and any other digital or optical storage device (including any cloud or email based storage) in the possession, custody, and or power of the Defendants and each of them, without turning on or off, accessing, altering, destroying, removing, transferring or otherwise tampering with such device subsequent to service of this Order, for the purpose of:-

H a) seizure for evidence of confidential and proprietary information and/or trade secrets of the Plaintiffs and any material which may be used as evidence in this action as set out in Schedule A attached hereto (the ‘Confidential Information’); and

I b) imaging of the same to preserve data integrity.

2. For the purposes of Order (1) above, that the Defendants and each of them must immediately upon service of this Order, hand over to the supervising solicitors(s) and/or its authorized representative(s) effective access to the above devices, including any login details and/or passwords as may be required;

3. An injunction to restrain the Defendants and each of them, whether acting by itself or through its directors, officers, servants, agents, or otherwise howsoever, until trial of this action or further Order, from disclosing or utilizing in any way, any or all of the Confidential Information as set out in Schedule A attached hereto for any purpose or to otherwise exploit the same without the Plaintiffs' consent; **A**
4. An Order to compel the Defendants and each of them, whether acting by itself or through its directors, officers, servants, agents, or otherwise howsoever, to deliver up to the supervising solicitor(s) and/or its authorized representative(s) immediately upon service of this Order, all documents and materials, including but not limited to those relating to the Confidential Information as set out in Schedule A attached hereto, in the possession, custody, and/or power of the Defendants and each of them, the use or disclosure of which would offend against the foregoing injunctions or any of them; **B**
5. If any device, documents, and/or material required to be delivered-up pursuant to this Order is not within immediately possession of the Defendants then, the same is to be delivered-up within 24 hours upon service of this Order, whereby the supervising solicitor(s) and/or its authorized representatives will be at liberty to accompany the Defendants to a nearby location to retrieve the same; **C**
6. That the items delivered up are to be kept in the custody of the supervising solicitors for the purposes of preserving the integrity of the evidence until further Order or direction of this Honourable Court; **D**
7. The Plaintiffs solicitors are to file a report to the Court on the above process; **E**
8. That the Defendants and each of them, within a period of 48 hours upon service of this Order, do respectively swear and forthwith serve Affidavit(s) upon the Plaintiffs' solicitors to:- **F**
- a) confirm that all the devices, documents, and/or materials required to be delivered-up under this Order have been so delivered-up, and if not, their whereabouts or what has happened to the same; and
- b) set out the names and addresses of all the persons (including any individuals or companies) to whom the Defendants have used, supplied, offered to supply, or otherwise howsoever delivered, the Confidential Information or any part thereof; **G**
9. That leave of Court be granted to the Plaintiffs to use the documents, materials and/or information obtained pursuant to these proceedings (including this Order) as is reasonably required to enforce the Plaintiffs' rights, including for the purposes of any other proceedings whether in or out of the jurisdiction; **H**
10. That the Defendants and each of them, whether acting by itself or through its directors, officers, servants, agents, or otherwise howsoever, be restrained from directly or indirectly informing or notifying any person, company, or firm of the existence of these proceedings and/or Order, except for the of purpose obtaining legal advice from solicitors. **I**

B. PROTECTIVE ORDERS/DIRECTIONS

11. That in respect of the conduct and/or disposal of the Application:-

- A** a) the Affidavits in respect of this Application are to be filed manually and need not be filed through electronic filing;
- b) the Affidavits in respect of this Application be segregated from other documents which have been filed or submitted to Court and be sealed with the following note, which shall be clearly visible:-
- B** CONFIDENTIAL AND PROTECTED INFORMATION
- Pursuant to the Order or Direction of Court given on [date] governing the preservation of confidentiality and protection of confidential documents and information, this package shall remain sealed in the Court files and is
- C** neither to be opened nor the contents thereof be accessed, displayed, disclosed or revealed except in accordance with the terms of the Order or Direction and permitted by the Court;
- c) that the Affidavits in respect of this Applications shall be kept confidential by the parties and be used solely for the purpose of these proceedings, and are not to be made accessible or available for public inspection by any
- D** person; and/or
- d) further or alternatively, that the Centek Group be given leave of Court to redact the exhibits in its Affidavits in respect of this Application insofar as the same contains Confidential Information.
- E**
- C. MISCELLANEOUS**
12. Parties be at liberty to apply for any consequential, incidental, or supplementary Orders;
- F** 13. The costs of and incidental to this application, including all incidentals incurred as a result of this Order, be costs in the cause; and
14. Such further and/or other relief as deemed fit by this Honourable Court.
- G** **SCHEDULE A**
- CONFIDENTIAL INFORMATION AND TRADE SECRETS**
- Confidential an proprietary information of the Plaintiffs' business, including but not limited to the following:-
- H** a) formulas, designs, specifications, drawings, know-how, manuals and instructions;
- b) customer lists, sales, non-public marketing and promotional information;
- c) business plans and forecasts;
- I** d) accounting and tax records, correspondence, orders and inquiries;
- e) non-public financial information, including but not limited to information about earnings, expenses and investments; pricing information; vendor or supplier lists; customer data; plans for future store facility locations; business development materials; costs of goods;

- personnel files; company policies, manuals, guidelines, procedures and SOPs; computer software; design documents and specifications; videos; and memos; **A**
- f) any document marked confidential, internal use only, proprietary, or by such other means as to indicate the intent is that the document is confidential to the Plaintiffs; **B**
- g) such other material or information that is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, person within the circles that normally deal with the kind of information in question, has commercial value because it is secret, and has been subject to reasonable steps under the circumstances, by the Plaintiffs, to keep it secret; and **C**
- h) business intelligence of the Plaintiffs, including market research in relation to the industry. **D**
- including any document substantially derived, produced, reproduced, copied, or otherwise howsoever created from the above documents or categories of documents; **D**
- whether printed, copied, or stored on hard drives, disks, diskettes, tapes, optical devices, mobile devices, and/or any other device capable of retaining electronic data and information whatsoever (including any cloud or email based storage). **E**
- [3] In gist, the nature of the various relief sought by the plaintiff in encl 3 can be summarised under the following headings:
- (a) prayer (1), (2) and (4)–(10) — for the modified anton piller order and its ancillary orders; **F**
- (b) prayer (3) for an interlocutory prohibitory injunction to restrain use of confidential information; **G**
- (c) prayer (11) — for protective measures and directions to preserved the confidentiality of the evidence presented before the court for this notice of application; and **G**
- (d) prayer (12)–(14) miscellaneous prayers pertaining to the above. **H**
- [4] At the conclusion of the hearing, I dismissed the defendants' application for setting aside in encl 22 and allowed the plaintiffs' inter parte injunction sought in encl 3. This judgment contains the full reasons for my decision. **H**
- [5] The relevant cause papers before this court are as follows: **I**
- (a) the plaintiffs' writ and statement of claim dated 25 November 2019;
- (b) the defendants' amended defence and counterclaim dated 9 January 2020;

- A** (c) the plaintiffs' reply and defence to counterclaim dated 10 February 2020; Enclosure 3;
- (d) the plaintiffs' notice of application (ex parte) dated 25 November 2019 (encl 3);
- B** (e) the plaintiffs' affidavit in support affirmed by Elizabeth Mary Lyden on 22 November 2019;
- (f) affidavit in reply affirmed by Farrah Dheeba bt. Shaiful Ridzuan on 10 February 2020;
- C** (g) affidavit in reply affirmed by Shaiful Dharma bin Shaiful Ridzuan on 10 February 2020;
- (h) affidavit in reply affirmed by Mohd Rafek bin Mohd Abdul Wapat on 10 February 2020;
- D** (i) affidavit in reply affirmed by Mohd Saufi bin Adam on 10 February 2020;
- (j) affidavit in reply affirmed by Elizabeth Mary Lyden on 27 February 2020;
- E** Enclosure 22:
- (k) the defendants' notice of application dated 31 December 2019 (encl 22);
- (l) affidavit in support affirmed by Farrah Dheeba bt Shaiful Ridzuan on 31 December 2019 (encl 23);
- F** (m) affidavit in support affirmed by Mohd Rafek bin Mohd Abdul Wapat on 31 December 2019 (encl 24);
- (n) affidavit in support affirmed by Mohd Saufi bin Adam on 31 December 2019 (encl 25);
- G** (o) affidavit in support affirmed by Shaiful Dharma bin Shaiful Ridzuan on 6 January 2020;
- (p) the plaintiffs' affidavit in reply affirmed by Elizabeth Mary Lyden on 6 February 2020;
- H** (q) affidavit in reply affirmed by Farah Dheeba bt Shaiful Ridzuan on 27 February 2020;
- (r) affidavit in reply affirmed by Mohd Rafek bin Mohd Abdul Wapat on 27 February 2020;
- I** (s) affidavit in reply affirmed by Mohd Saufi bin Adam on 27 February 2020;
- (t) affidavit in reply affirmed by Shaiful Dharma bin Shaiful Ridzuan on 27 February 2020;

- (u) Laporan Peguam Pemerhati oleh Law Partnership dated 2 March 2020; and
(v) notice of intention to use affidavit. A

BACKGROUND FACTS B

[6] The plaintiffs are related companies which collectively form the Centek Group of Companies in the United Kingdom ('Centek Group').

[7] The Centek Group is involved in the business of manufacturing centralisers and stop collars for the oil and gas industries. C

[8] The Centek Group has amassed and owns various trade secrets and proprietary information in relation to its business, products and customers. Such information is confidential in nature, and includes the documents particularised in Schedule A above (the confidential information) (see para 2). D

[9] The plaintiffs employed Mr Tristram Giles (Giles) in the United Kingdom where Giles was entrusted with various confidential information by the plaintiffs. Giles left the employment of the plaintiff on 16 August 2019. E

[10] Following Giles' resignation, his responsibilities and duties were handed over to one Mr Andrew John Boulcot (Andrew). F

[11] On assessing the Centek email account, the first plaintiff discovered that Giles had been emailing confidential information to various personal and third party email addresses between December 2018–August 2019. F

[12] The Centek Group accordingly commenced suit in the High Court of England and Wales against Giles on 30 August 2019 claiming, inter alia, that Giles had been in breaches of contract and/or confidence ('UKHC proceedings'). G

[13] The Centek Group filed and obtained an ex parte order dated 30 August 2019 in the UKHC proceedings ('UKHC order') which amongst other things required Giles to deliver up various devices which many contain confidential information to be imaged by information technology ('IT') experts to preserve evidence. H

[14] The IT experts were able to recover various materials pursuant to the UKHC order including WhatsApp messages between Giles and the first, third and fourth defendants which shows that confidential information was wrongfully disclosed to and misused by the said defendants. I

A [15] In the result, the Centek Group commence these proceedings against the defendants based on various pleaded cause of action in the statement of claim, namely:

- (a) third party liability in equity for breach of confidence;
- B (b) conspiracy; and
- (c) unlawful interference with trade.

PRELIMINARY OBJECTIONS

C [16] Learned counsel for the plaintiffs raised two procedural objections ('PO') at the outset of the hearing.

- D [17] In the first preliminary objection, the defendants contend that:
- (a) the plaintiffs' affidavit in support breaches the Oaths and Affirmations Act 1949, the Diplomatic and Consular Officers (Oaths And Fees) Act 1959, and the Rules of Court 2012 ('the ROC') as it was affirmed before a solicitor;
 - E (b) the plaintiffs' affidavit in support was tempered by having two dates, namely 20 November 2019 and 22 November 2019; and
 - (c) the plaintiffs' affidavit in support was not filed in the Malay language.

- F [18] In the second preliminary objection, the defendants contend that:
- a) the plaintiffs' affidavit in support whether dated 20 November 2019 or 22 November 2019 was not paid for and was not filed electronically; and
 - b) the plaintiffs have not filed and served ad interim orders of 12 December 2019 and 14 January 2019 on the defendants.

G *The plaintiffs' affidavit in support breaches the Oaths and Affirmations Act 1949, the Diplomatic and Consular Officers (Oaths and Fees) Act 1959 and the ROC 2012 as it was affirmed before solicitor*

H [19] The defendants' submit that the plaintiffs' affidavit in support is defective on the ground that it was affirmed before a solicitor of the United Kingdom and not a Notary Public or Consular officer, thereby alleging breaches of:

- I
- (a) s 5 of the Oaths and Affirmations Act 1949;
 - (b) ss 2 and 3(1) of the Diplomatic and Consular Officers (Oaths and Fees) Act 1959; and
 - (c) O 41 r 12 of the ROC 2012.

[20] In my opinion the affidavit was validly affirmed in accordance with O 41 r 12 of the ROC 2012 which reads as follows:

Affidavit taken outside Malaysia admissible without proof of seal

A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, notary public or *person having authority to administer oaths in a Commonwealth country* and in the case of any other country the seal or signature of a consular officer of a Commonwealth country in testimony of an affidavit being taken before it or him *shall be admitted in evidence without proof of the seal or signature being the seal or signature of that Court, Judge, notary public or person.* (Emphasis added.)

[21] Order 41 rule 12 of the ROC 2012 must be read subject to r 8.1 of the Solicitors Regulation Authority Practice Framework Rules 2011 (SRA), which was made pursuant to the UK Solicitors Act 1974, the UK Administration of Justice Act 1985 and the UK Legal Services Act 2007, which gives the right to a solicitor to administer oaths in the United Kingdom, which is a Commonwealth country.

[22] In the case of *Diageo Ireland v My Flexitank Industries Sdn Bhd* [2015] MLJU 1121; [2015] 1 LNS 1176, an identical preliminary objection was raised but was dismissed by the High Court based on the following grounds:

After considering the submissions of both parties, it is my considered view that the said affidavit in reply was affirmed in accordance with O 41 r 12 ROC where *Claire Lawlor, a solicitor of the United Kingdom, is a person having authority to administer oaths in a Commonwealth country*, having being empowered under Rule 8.1 of the Solicitors Regulation Authority (SRA) Practice Framework Rules 2011. Its is only in the case of any other country (non Commonwealth) that the seal or signature of a consular of a Commonwealth country is recognised. *In fact, s 5 of the Oaths and Affirmation Act 1949 (Revised 1977) allows any person having authority to administer an oath in any place out of Peninsular Malaysia for an affidavit required for the purpose of any court or matter in Peninsular Malaysia. O 41 r 12 ROC is consistent with the provision in s 5 Oaths and Affirmation Act 1949 (Revised 1977). With regards s 3(1) of the Diplomatic and Consular Officers (Oaths and Fees) Act 1959, it merely provides that every diplomatic and consular officer exercising his functions in any country or place outside Malaysia may in that country or place administer oath or affirmation and take any affidavit but it does not mandate they are the only ones, to the exclusion of others, who can perform this function.* This section is only about powers as to oaths and notarial acts abroad that our Malaysian diplomatic and consular officer can perform, and *not as a bar against the others who are authorised to perform such a function under O 41 r 12 ROC.* (Emphasis added.)

[23] Based on the above, it clearly shows that a solicitor of the United Kingdom is a person having authority to administer oath in a Commonwealth country.

- A [24] Applying the principles of the above case to the facts of the present case, I find that Micheal BG Cosgrove, a solicitor of England/Wales, is a person having authority to administer oath in the Commonwealth country, having being empowered under r 8.1 of the Solicitors Regulation Authority (SRA) Practice Framework Rules 2011.
- B [25] Based on the above, I am of the opinion the defendants' PO on this ground is unsustainable and devoid of merits.
- C *The plaintiffs' affidavit in support was tampered by having two dates namely 20 November 2019 and 22 November 2019*
- D [26] Upon perusal of the plaintiffs' affidavit in support and the explanation given by the plaintiff in regard to two different dates of 20 November 2019 and 22 November 2019. I find that there is no tampering of the plaintiffs' affidavit in support.
- E [27] Further, I find that the plaintiffs' had given a bona fide and credible explanation as to why there are two different dates of 20 November 2019 and 22 November 2019, the reasons are as follows:
- F (a) two separate affidavits were affirmed by the plaintiffs' Elizabeth Mary Lyden before Solicitor Micheal BG Cosgrove, namely, on 20 November 2019 and 22 November 2019 respectively;
- G (b) the content of the aforesaid affidavits are similar and/or substantially similar. The reason why the affidavit affirmed on 22 November 2019 was made was to include additional matters to address the third defendant's involvement in a company known as Vidda (M) Sdn Bhd. These can be found in paras 59–64 of the affidavit affirmed on 22 November 2019. There were no changes to the exhibits therein;
- H (c) the affidavit affirmed on 20 November 2019 was not used for the purpose of these proceedings;
- I (d) the affidavit which was filed and read in court on 3 December 2019 was the affidavit affirmed on 22 November 2019;
- (e) based on the plaintiffs' records, each of the second, third, fourth and fifth defendants were served with a copy of the affidavit affirmed on 22 November 2019 on 12 December 2019;
- (f) a copy of the affidavit affirmed on 20 November 2019 may have been served on (the defendants' solicitors) on 16 December 2019 and if so, this is inadvertent as the relevant affidavit is that affirmed on 22 November 2019; and

(g) it may further be noted that the affidavit affirmed on 22 November 2019 was also reproduced in the plaintiffs' core bundle of documents at pp 1–41 (CBD). A copy of the CBD was delivered to each of the second to fifth defendants on 12 December 2019 and to (the defendants' solicitors) on 16 December 2019.

A

B

[28] The defendants had relied on O 41 r 7 of the ROC 2012 and the case of *Gilbert Engineering Co, Inc v Zainuddin bin Ahmad & Ors* [2003] 6 MLJ 103 to support their case of non-compliance and/or tampering.

C

[29] However, I find O 41 r 7 of the ROC 2012 only applies in relation to an affidavit which has any 'interlineation, erasure or other alteration' therein.

D

[30] I am also of the view *Gilbert Engineering* was very different on the facts, where amendments therein made to dates and figures appearing in the substance of the affidavits.

E

[31] In the instance case, I find that there were two different affidavits sworn and so the said authorities are of no application. This is not a case of any interlineation, erasure, or other alteration to one or the other of the two affidavits. The reason for the existence of the two dates of 20 November 2019 and 22 November 2019 have also been credibly explained with bona fide reasons, unlike the case of *Gilbert Engineering* where no such explanation was proffered.

F

[32] Based on the above, I find that the defendants' PO on this ground is also unsustainable and devoid of merits.

The plaintiffs' affidavit in support was not filed in the Malay language

G

[33] The defendants' submitted that the affidavits in support which was affirmed in United Kingdom is defective because it was not filed in the National language and relied on the decisions of *Sykt Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd* [1994] 2 MLJ 420 and *Gilbert Engineering* to support its contention.

H

[34] However upon perusing the authorities above, I find that the cases cited by the defendants are no longer represent the current state of the law in Malaysia. This is because the two cases were decided based on the then prevailing O 41 of the ROC 1980.

I

[35] Under the ROC 1980, there was no equivalent of the now-existing O 41 r 13 of the ROC 2012, which reads:

- A Language of affidavit (O 41 r 13)
An affidavit of a deponent affirmed outside the jurisdiction may be filed in the English language and unless the Court otherwise orders, need not be accompanied by a translation in the national language.
- B [36] The same point was also raised but similarly rejected in the case of *Diageo Ireland* when the High Court held as follows:
Next, O 41 r 13 ROC allows an affidavit of a deponent affirmed outside the jurisdiction may be filed in the English Language. Therefore, there is nothing wrong with the said affidavit in reply being written in English.
- C [37] Based on the above, I find that the defendants' PO on this ground is devoid of merits.
- D *The plaintiffs affidavit in support whether dated 20 November 2019 or 22 November 2019 was not paid for and was not filed electronically*
- E [38] The defendants submit that the plaintiffs' affidavit in support, whether dated 20 November 2019 or 22 November 2019, were not filed through the e-filing electronic system, allegedly violating O 63A r 7(1) of the ROC 2012 which reads:
Where a specified document is required to be filed with the Registrar under any other provision of these Rules, it shall be so filed using the electronic filing service in accordance with this Order and any practice directions for the time being issued by the Registrar.
- F [39] The defendants further contend that because the same was not filed electronically, there was no payment of the prescribed fee, thereby allegedly violating O 63A rr 9(1) and 10(2) of the ROC 2012, which read:
9(1) Where a document is filed with the Registrar using the electronic filing service or service bureau and is subsequently accepted by the Registrar, it shall be deemed to be filed upon successful payment into the Court's computer system by the registered user or any person respectively of any prescribed fees required by the Rules.
- H 10(2) Where a document not requiring a seal of the Court is filed with the Registrar via a service bureau, the time for service of that document shall only begin to run upon successful payment, by the registered user or any person of any prescribed fees required by the Rules, into the Court's computer system.
- I [40] Notwithstanding the above, I find that O 63A r 7(4) of the ROC 2012, allows the plaintiff to file the affidavit in support manually and need not be filed through electronic filing.

[41] Order 63(A) r 7(4) of the ROC 2012 reads as follows:

A

Notwithstanding anything in paragraph (1), the Registrar may allow a document, part of a document or any class of documents to be filed other than by using the electronic filing service.

[42] Upon perusing the court's file, I noticed that the plaintiff's affidavit (1) dated 22 November 2019 was filed in court at the case management held on 27 November 2019, whereby a hard copy of the PA was filed directly with the deputy registrar at case management.

B

[43] This is reflected further from the cover letter prepared by the plaintiffs' solicitors dated 27 November 2019 where the plaintiffs had specifically invoked the registrar's discretion under O 63A r 7(4) of the ROC 2012:

C

Harap maklum bahawa dokumen-dokumen (a) dan (b) di atas telah difailkan menerusi system e-filing. Dokumen (c) di atas tidak difailkan menerusi sistem e-filing atas atasan bahawa ianya mengandungi maklumat sulit, dan pihak Plaintiff-plaintif dengan rendah diri memohon kebenaran Mahkamah untuk memfailkan dokumen tersebut secara manual menurut peruntukan A 63A k 7(4) Kaedah-Kaedah Mahkamah 2012.

D

E

[44] Therefore, based on the above, it is clear that the plaintiffs' affidavit (1) dated 22 November 2020 was never filed electronically as there was a need to preserve confidentiality of the documents. To my view, the question of any breach of any rule in O 63A of the ROC 2012 pertaining to electronic filing does not arise.

F

[45] I am also of the view that O 63A r 7(4) of the ROC 2012 was invoked by the High Court in *Kingtime International Ltd & Anor v Petrofac E&C Sdn Bhd* [2020] 11 MLJ 141; [2020] 1 CLJ 862.

G

[46] Based on the above, I find that there is no breach of any provision of O 63A of the ROC 2012 and the plaintiffs' affidavit (1) was duly filed in court.

The plaintiffs have not filed and served ad interim orders dated 12 December 2019 and 14 January 2019 on the defendant

H

[47] Upon perusal of the ad interim orders, I find that the filing or service of ad interim order are a non-starter as this is not an application to enforce the said ad interim orders against the defendants.

I

[48] Further, I find that the subject matter of the ad interim orders of 12 December 2019 and 14 January 2020 merely relate to the interlocutory prohibitory injunction expressed in prayer (3) of the order. This is of course the

A subject of an inter partes hearing before the court, where, the defendants are once more able to be heard on the merits.

[49] In conclusion, I find that none of the POs raised by the defendants have any merits and accordingly the said POs is dismissed.

B
DECISION OF THE COURT

C [50] Having fully and carefully considered the plaintiffs' and defendants' cases as well as all the issues raised in the plaintiffs' and defendants' submissions (oral and written), I have decided to allow the plaintiffs' encl 3 and dismiss the defendants encl 22. This is my judgment setting out the full reasons of my decision.

D [51] The defendants' relied on the following grounds in support of the application (encl 22):

- (a) the plaintiffs have failed to show an extremely strong prima facie case on the merits;
- E (b) the plaintiffs have not clearly pleaded the confidential information in Schedule A;
- (c) the plaintiffs have failed to disclose material facts;
- (d) the plaintiffs have failed to comply with the minimum standards and guidelines for the contents and execution of Anton Piller orders; and
- F (e) the plaintiffs have not provided an undertaking as to damages.

The plaintiffs have failed to show an extremely strong prima case on the merits

G [52] It is to be noted that the order granted in the present case was a delivery up order which is a less drastic form of an Anton Piller order. It has also been judicially described as 'Doorstep Delivery Up Order' which requires the defendant to deliver up documents to the plaintiff (see *Lock International plc v Beswick and others* [1989] 1 WLR 1268; *Juris Technologies Sdn Bhd & Anor v Foo Tiang Sin & Ors* [2019] 12 MLJ 785; [2019] 9 CLJ 617).

H [53] Upon perusal of the plaintiffs' and defendants' affidavits, I am of the view that the plaintiffs have shown that it has a strong prima facie case on merits against the defendants for amongst, others, for breach of confidence.

I [54] I find that a strong prima facie case had been made out based on the evidence available before the grant of the order.

[55] In the case of *Watermech Engineering Sdn Bhd & Anor v Novaviro Technology Sdn Bhd* [2015] 3 MLJ 285 at p 300; [2014] 9 CLJ 791 at p 810 the Court of Appeal held as follows:

[48] As regards the Anton Piller order, we are in agreement that the *learned trial judge was correct, under the circumstances, to grant the order as applied for by the plaintiff and to not have it set aside. The risk factor that the defendants may destroy or cause to be destroyed the incriminating evidence was not one that was merely playing in the mind of the plaintiff. The various documents that were obtained as a result of the enforcement of that order had brought significant advantages that had helped decipher the problems pertaining to the issues at hand between the parties.* Of immense importance, in our view must be *the drawings recovered from the defendants* from which the ensuing cross-examination of the relevant defendants' witnesses had led to the revelation as regards the true source of the so-called USB system which the defendants had claimed to be entirely different from the CSTR system which had its genesis in the works of SPI for his employer Keck Seng and for whose use the plaintiff had been paying licensing fees to Keck Seng. (Emphasis added.)

[56] From the above, it clearly shows that the Court of Appeal upheld the decision of the trial judge to grant an Anton Piller order and to not set aside, relying on, inter alia, the documents obtained as a result of the enforcement of that order.

EVIDENCE SECURED PURSUANT TO THE ORDER

[57] In our present case, the plaintiff recovered critical evidence in 'exh A10', to 'A12' and 'A14' in the plaintiffs' affidavit in reply (1) dated 6 February 2020.

[58] I find that exh 'A10' are documents in the form of drawing recovered under the order (offending article).

[59] When the plaintiffs' confidential information and the corresponding offending article bearing the defendants' fingerprints therein are compared, I am of the view that the said offending article were copied or were otherwise derived from the confidential information as they are similar or substantially similar.

[60] In an ancient case of *Saltman Engineering Co Ltd and Others v Campbell Engineering Co Ltd* [1963] 3 All ER 413 at p 414 the English Court of Appeal held that:

If a defendant is proved to have used confidential information, directly or indirectly obtained from the plaintiff, without the consent, express or implied, of the plaintiff, he will be guilty of an infringement of the plaintiff's rights.

[61] Further in the case of *Cranleigh Precision Engineering Ltd v Bryant and*

A *Another* [1964] 3 All ER 289 p at 301, Roskill J held that:

B [24] As I understand it, the essence of this branch of the law, whatever the origin of it may be, *is that a person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person who made the confidential communication*, and spring-board it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public. (Emphasis added.)

C [62] Applying the above authorities to the facts of the present case, I am of the opinion that the offending article, have been wrongfully copied or produced by the wrongful use of the plaintiffs' confidential information and this amount to clear misuse of confidential information.

D [63] Added to that, I find that the said misuse was in fact unanswered by the defendants. When the defendants were confronted with the said exh 'A10' they asserted that the offending articles 'tidak pernah wujud dan tidak pernah dibuktikan secara jelas dalam Jadual A' and proffered a series of bare denial.

E [64] Upon perusal of Jadual A, I find that the following matters clearly appear therein which encompasses the offending articles:

Confidential and proprietary information of the plaintiffs' business, including but not limited to the following:-

F a) Formulas, designs, specifications, drawings, know-how, manuals and instructions.

Including any document substantially derived, produced, reproduced, copied or otherwise howsoever created from the above documents or categories of documents ...

G [65] Further, having perused paras 43–47 of the plaintiffs' affidavit in reply (1) dated 6 February 2020, I find that there were WhatsApp communications recovered under the order between Shaiful and Farrah (exh A11) and between Shaiful and Mohd Shaiful Ad Rahman (exh A12).

H [66] Upon reading the WhatsApp correspondences as a whole I find that it crystallises the plaintiffs' concern that there exists a genuine and serious risk that incriminating evidence will be (or has been) destroyed or removed.

I [67] Evidence shows that Giles had contacted Shay on 1 September 2019 (ie one day after the UKHC order), who in turn contacted Shaiful on the same day, to request for deletion of evidence. This is what the WhatsApp messages read:

'Basically my old company says I'm in breach of contract and they are trying to get

a high court to get them access to my new work email so a special IT company can do a sensitive search. **A**

So basically I need to wipe, with out any trace most or all of my emails ... So there is no way whatsoever that a specialist company can retrieve.

My problem is there actually might??? Be documents or email that could be a problem ... I'm not 100% certain, but I don't want to risk it. **B**

'The main problem is that I'm contracted to my old company, which ends today!! But I actually started working for Rapax and doing work through my Rapax email a while back ... so I basically need to prove I haven't been active!!

That's why I need it gone!! **C**

Thanks for your help!'

[68] Upon receiving the WhatsApp messages, Shaiful forwarded the above WhatsApp messages to Farrah, also on 1 September 2019. Farrah replied as follows: **D**

'Tris hanta kat dama ke?'

'Kt shay' **E**

'Centek trace email Iris pasal project ni'

'So they are taking action towards him'.

[69] It is to be noted that the request for deletion from Tris Giles had in fact been complied with. The fact of deletion is confirmed by Farrah as at 27 September 2019, where she says by email of 27 September 2019 as follows: **F**

Hello Tris,

Here is to confirm that your email account Tris.Giles@rapax.com.my is no longer active and has been deleted. **G**

[70] Based on the above, it is clear that the WhatsApp conversations between the defendants' shows that each and every one of them are connected to each other towards the common design involving Giles and the various causes of action pleaded against them. **H**

EVIDENCE BEFORE THE ORDER

[71] This court finds that from the evidence produced in court, each and every defendants were acting in concert towards their common design. This can be gleaned from the following facts: **I**

- A (a) by a WhatsApp message from Giles to Farrah of 24 June 2019, Giles requested and Farrah sent to him the email address of shaifuldharma@flowpax.com.my;
- B (b) by a WhatsApp message from Farrah to Giles of 26 June 2019, Farrah informed Giles that there was going to be a meeting involving, inter alia, Farrah, Dharma and Rafek; and
- C (c) by a WhatsApp message from Farrah to Giles dated 11 July 2019, Farrah inquired if Giles would want his email address to be Tris.Giles@rapax.com.my.

[72] It is clear that the nature of the documents and/or information wrongfully revealed by Giles is clearly confidential in nature. Some of the confidential information that have been wrongfully revealed are as follows:

- D (a) the 'Global casing Centralizer Market Research Report 2018' to Farrah on 21 June 2019;
- (b) the '2019 Price Lists' to Farrah on 2 July 2019 and Rafek on 13 February 2019;
- E (c) the 'Halliburton Master Price List-Effective 28 March 2019' to Farrah on 2 July 2019 and Rafek on 28 March 2019;
- (d) the 'Daily delivery — Feb' 19' to Rafek on 25 March 2019; and
- F (e) the 'Non-Disclosure Agreement Blank' to Farrah on 18 July 2019 and Rafek on 19 July 2019.

- G [73] Importantly I noticed that Giles has, via the WhatsApp messages with Rafek, indicated that he had obtained a copy of 'all Centeks worldwide Casing teams contacts from end users, purchasers to distributors ... 17 years worth of contacts, emails and phone numbers'.

[74] Rafek's response to the above was this.

That's good Tris ... I want to expedite this project asap.

- H [75] From the above, it is clear that the information or documents of the type wrongfully revealed by Giles to the defendants are confidential in nature, these being:

- I (a) information relating to customers, cost prices together with the specific needs and requirements of customers (see *Worldwide Rota Dies Sdn Bhd v Ronald Ong Cheow Joon* [2010] 8 MLJ 297); and
- (b) manufacturing processes or secret formulae; information relating to the list of names and addresses of customers and suppliers, cost prices (see

Schmidt Scientific Sdn Bhd v Ong Han Suan [1997] 5 MLJ 632).

A

[76] Based on the above, in my mind the defendants had misused the confidential information for their own purposes to unlawfully 'expedite' their contemplated business in Malaysia and therefore I am satisfied that the plaintiffs had sufficiently proved an extremely strong prima facie on the merits.

B

The plaintiffs have not clearly pleaded the confidential information in Schedule A

[77] To address this issue, I have perused Schedule A of the order and the plaintiffs statement of claim and I find that the plaintiffs have sufficiently particularised and pleaded all that is necessary based on the best available information.

C

[78] In the case of *Tracerco Asia Sdn Bhd v Nor Hisham Mohd Nordin & Ors* [2013] 7 MLJ 75 at p 84 Mary Lim J (now FCJ) had to consider, on an application for further and better particulars in a claim for breach of confidence, whether the statement of claim in that case were adequate. Her Ladyship concluded that:

D

[28] In my view, the answers to all these questions are in the affirmative. The plaintiff has pleaded sufficient and necessary material particulars of its claims for the defendants to respond. In any case, I agree with the plaintiff that the matters sought are substantially evidentiary in nature.

E

[79] In arriving at the conclusion, Her Ladyship examined the pleadings filed. It was then observed that:

F

[30] The circumstances of confidence, that is the contractual relationship of the parties, the contracts of employment with the plaintiff and how the fifth defendant was established and how the information could have been accessed by the defendants are also pleaded. At this point, it can be said that the information identified is of the type which could be treated as confidential. There is further obvious use of the same without the plaintiff's consent.

G

[80] Applying the principles of the above case to the facts of the present case, I find that the plaintiffs have pleaded all of the above matters in its statement of claim ('SOC'), based on the best available evidence at the material time that is available to it. Thus:

H

- (a) the confidential information which the plaintiffs intend to rely on, and which are treated as confidential, are pleaded in paras 14–17, 29 and 41 of the SOC;
- (b) the circumstances of confidence are pleaded in paras 18–43 of the SOC; and

I

A (c) the fact that the confidential information was used without licence or consent are pleaded in paras 36, 40 and 41 of the SOC.

[81] Further, I also find that the said confidential information is further defined by a Schedule A to the SOC.

B

[82] The fact that the plaintiffs have pleaded all the necessary matters based on the best available evidence at the material time is further fortified by the defence and counterclaim filed by the defendants, together with the various affidavits filed for encls 3 and 22 herein.

C

[83] It can be noted from those cause papers that the defendants are not in the least troubled, prejudiced or embarrassed in putting forth their collective cases.

D

[84] In the case of *Tracerco Asia Sdn Bhd*, Mary Lim J (now FCJ) at p 85 further held as follows:

[33] While the deponents of the defendants' affidavits have been careful not to admit or be deemed to having admitted the plaintiff's claim, the *deponents were not in the least troubled, hesitant, prejudiced or embarrassed in putting their respective case. On the contrary, the affidavits reveal familiarity and reflect the defendants' clear understanding and appreciation of the plaintiffs' claims, how the defendants are involved and how the defendants propose to meet and answer those claims.* These deponents have, in addition, elaborated and amplified on the information concerned.

E

F

(Emphasis added.)

[85] Under the rules of pleading, a party is only to plead the material facts in support of a claim, and not the evidence by which those facts are to be proven (see O 18 r 7 of the ROC 2012).

G

[86] This is important because the defendant's complaint appears to be that the plaintiffs have not pleaded the relevant evidence in support of its claims, namely, exh 'A10'. However, I find that exh 'A10' constitutes evidence — these are not to be pleaded.

H

[87] Therefore, based on the above, I find that the defendants' challenge on the alleged insufficiency of the particulars of the confidential information is misconstrued. In my view, the SOC prepared in the instant case is fully detailed, and sets out all of the material facts that are known to the plaintiffs.

I

The plaintiffs have failed to disclose material facts

[88] The defendants submit that the plaintiffs have not disclosed material facts. In this regard, the defendants alleged that the plaintiffs have failed to disclose:

- (a) 'hubungan rapat antara plaintiff-plaintiff dan majikan defendan ketiga', Vidda (M) Sdn Bhd; and
- (b) 'kewujudan Syarikat Halliburton (M) Sdn Bhd yang merupakan bekas majikan D4 sebelum ini'.

[89] Having perused the cause papers, I am of the opinion that the defendants' complaint of non-disclosure is unsustainable. This is because the facts allegedly not disclosed were disclosed and/or were not material facts in that it would not have affected the granting or otherwise of the order.

[90] I am of the view that the defendants' reliance on the so-called 'close relationship' between the plaintiffs and Vidda (M) Sdn Bhd as being a point of non-disclosure cannot hold water, because these are the very points which were the subject of paras 59–64 of the plaintiffs' affidavit affirmed on 22 November 2019 filed, read and served herein.

[91] Upon perusal at paras 60–63 of the plaintiffs' affidavit affirmed on 22 November 2019, I find that plaintiffs had disclosed the following facts relating to Vidda and Rafek (third defendant):

60. On this note, the Centek Group states that it has been working together with a company known as Vidda (M) Sdn Bhd ('Vidda'), whereby Vidda is to inter alia market and distribute the Centek Group's products locally.

61. Amongst other possible ventures, Vidda is and has been assisting the Centek Group from or around October 2019 with a tender process involving PETRONAS. Accordingly, Confidential Information such as prices lists would have been communicated to Vidda for the sole and limited purpose of the Centek Group's business in Malaysia, and in any event under strict obligations of confidence.

62. The main contact person or representative from Vidda which deal with the Centek Group is one 'Mohd Rafek Mohd Abdul Wapat'. In the course of preparing these cause papers, the Centek Group believes that this person is in fact the Third defendant herein, Rafek.

63. In relation to Vidda, some Confidential Information would have been disclosed or communicated by the Centek Group to Rafek in his capacity as an employee or officer of Vidda. Any such disclosure or communication is subject to the aforesaid obligations of confidence and its intended to be used solely for the purposes of the Centek Group's business.

[92] Further, I find that the defendants' reliance on this so-called company known as Halliburton (M) Sdn Bhd also cannot hold water, because as far as the plaintiffs are aware, there is no such company, whether as alleged or at all.

A But if the fourth defendant wishes to rely on its former employer, it is to be noted that the plaintiffs have in fact stated the following facts when describing the fourth defendant:

B 14. The Fourth Defendant, Mohd Saufi bin Adam (Saufi), is a Malaysian citizen of full age with a last known address of employment at PLO 48, Jalan Persiaran Teknologi, Taman Teknologi Johor, 81400 Senai Johor.

Now produced and shown to me marked collectively as Exhibit 'A-4' is a printout of Saufi's LinkedIn profile and the Corporate Information of Halliburton Manufacturing & Technology (M) Sdn Bhd.

C [93] Even if this court were to accept the defendants' argument that there had been non-disclosure for both of these facts, I am of the view that these facts are not of a material nature such that any non-disclosure thereof would automatically warrant the setting aside of the order.

D [94] In the case of *Noor Jahan bte Abdul Wahab v Md Yusoff bin Amanshah & Anor* [1994] 1 MLJ 156 at p 168; [1994] 2 CLJ 249 at p 256, Edgar Joseph Jr J (as he then was) had stated:

E It does not, however, necessarily follow that because the plaintiff had failed to disclose these facts that an order for discharge of the injunction must inevitably follow for the court would still have to consider whether justice requires the injunction to continue. In considering this part of the case I have asked myself whether the non-disclosure of the facts concerned was so severe that, had there been full disclosure, this court would not have granted the interlocutory injunction (see
F *Hong Leong Holdings Ltd v Sunbird (Pte) Ltd* [1990] 3 MLJ 65; *Professor Dr A Kahar Bador & Ors v N Krishnan & Ors* [1983] 1 MLJ 407 at p 409).

G Having considered the matter in that way, I am not prepared to hold that if a full and true picture had been disclosed to the court in the first place, I would not have granted the interlocutory injunction and so I would hold that his ground advanced by the first defendant fails.

H [95] Based on the authority cited above, in my mind the court must ask itself whether non-disclosure of the facts concerned was so severe that, had there been full disclosure, the court would not have granted the order, because the court would still have to consider whether justice requires the order to continue.

I [96] It is my view that the alleged facts concerned are not of such severity, relative to what the evidence has revealed thus far about the defendants' wrongdoing. The defendants have misused the plaintiffs' confidential information and this is clearly borne out of evidence recovered under the order.

The plaintiffs have failed to comply with the minimum standards and guidelines for the contents and execution of Anton Piller orders

[97] It is to be noted that the order granted in the present case is not an Anton Piller order. In the case of Anton Piller order, the court will order the defendants to allow the plaintiffs' representative to enter the defendants' premises and to remove infringing objects and documents. A

[98] As this Anton Piller order is highly draconian, the courts have developed a similarly strong, albeit less stringent, variation of the Anton Piller order which has been judicially described as doorstep delivery up order. B

[99] In the present case, a doorstep delivery up order has been granted which in effect requires the defendants to deliver up documents to the plaintiffs. C

[100] It is to be noted that in the present case the supervising solicitors are led by Mr Suaran Singh of Messrs Law Partnership. Mr Suaran Singh himself has prepared an SS Report for this court, which details what had happened in relation to the execution of the order at all material times. D

[101] I am of the view that the supervising solicitors had not at any material times acted in excess of the order. As stated in the SS Report, all processes including the review and extraction of data was undertaken with the presence, participation and even the agreement of the defendants' solicitors by, inter alia, the consent form. E

[102] Therefore, in my view the defendants are estopped from contending that the review and extraction are outside the scope of the order (see Items 1 and 9 of the order) by virtue of their participation and agreement to the said processes (see *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331; [1995] 4 CLJ 283). F

The plaintiff have not provided an undertaking as to damages G

[103] The defendants submit that the plaintiffs should have given more than just a 'jaminan dalam bentuk verbal kepada mahkamah'.

[104] Upon perusal of the order, I find that the plaintiffs have not merely given a verbal undertaking to the court as to damages but that undertaking is recorded in writing in the order itself. H

[105] I am of the view that if the defendants have any issue pertaining to the adequacy of the undertaking, the defendants must show sufficient cause and need to file the necessary applications as are permitted under the law. However, I find the only pending applications before the court are in encls 3 and 22 herein. Thus, to me there is no legitimate challenge or application as to the adequacy or otherwise of the undertaking as to damages given. I

A THE DAMAGE TO THE PLAINTIFF IS VERY SERIOUS

B [106] Based on the evidence presented in court, I am of the view that the defendants have in their possession incriminating documents or things. There is clear evidence of misuse of the confidential information by the defendants to produce copies or imitation of the plaintiffs' product.

C [107] It is to be noted that the evidence available to the plaintiffs thus far is limited, namely, to the evidence that has actually been recovered from Giles pursuant to the UKHC order.

D [108] Based on the above, I am of the view that there will be further direct evidence in the possession of the defendants, and in particular, on their mobile devices, given the manner in which Giles had been communicating with the defendants.

E [109] Further, I find that the evidence shows that Giles had already contacted Rafek and Farrah on 16 September 2019 and 27 September 2019 respectively, purportedly for the purposes of complying with the UKHC order. As a result, Farrah had indicated that she had 'deleted' the email address of Tris.Giles@rapax.com.my.

F [110] Notwithstanding the alleged 'deletion' of the said email address, there is still an avenue for the relevant IT experts to put an effort to recover such deleted data, provided that such processes are undertaken as soon as possible.

G [111] Added to that, as a matter of deduction there is a tendency for a person who has committed wrong to cover or destroy evidence of his wrong doing.

G [112] In the case of *Multi-Code Electronics Industries (M) Bhd & Anor v Gordon Toh Chun Toh & Ors* [2009] 9 CLJ 659 at p 686, Kang Hwee Gee J (as he then was) held that:

H [14] I am satisfied that the pre-conditions alluded to above have been satisfied for Anton Piller on similar grounds and reasons. *The plaintiffs were not in possession of the documents or things which would enable them to prove and to trace the monies allegedly taken from them. As an alleged co-perpetrator, it is to be presumed that he must have in his possession such records of where those monies were kept or sent. It follows as a matter of plain deduction that in the ordinary course of human conduct that there is a tendency for a person who perpetrates a crime who does not own up to cover or destroy evidence of his wrong doing.*

I [15] On the requirement that there must be a real risk of destruction, I would rely on and adopt what Justice Oliver of the English Court of Appeal said in *Dunlop Holdings Ltd & Dunlop Ltd v Staravia Ltd* [1982] Com LR 3:

Although in the original Anton Piller case there was clear evidence of the possibility that the evidence might be destroyed, *it has certainly become customary to infer the probability of disappearance or destruction of evidence where it is clearly established on the evidence before the court that the defendant is engaged in a nefarious activity which renders it likely that he is an untrustworthy person*. It is seldom that one can get cogent or actual evidence of a threat to destroy material or documents, so it is necessary for it to be inferred from the evidence which is before the court. (Emphasis added.)

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B

[113] From the above case law, it clearly shows that the probability of disappearance or destruction of evidence can be inferred where the defendants can be shown to likely be untrustworthy or are engaged in a nefarious activity.

C

[114] Referring back to the facts of the present case, I am of the considered opinion that the act of copying and imitating of the confidential information and the defendants' conduct and position in this suit amounts to evidence that the defendants are likely to be untrustworthy or lack probity

D

[115] In view of the aforesaid, I am of the considered view that a very serious damage would be occasioned on the plaintiffs if the order had not been granted or set aside, namely:

E

- (a) by the possible destruction or removal of important and direct evidence of an incriminating nature; and
- (b) by the nature and extent of the damage arising from misuse of confidential information.

F

[116] It is to be noted that in cases involving breaches of confidence in confidential information, the court have judicially recognised that damages are not an adequate remedy to the plaintiff because of the difficulty involved (see *Svenson Hair Center Sdn Bhd v Irene Chin Zee Ling* [2008] 7 MLJ 903; [2008] 8 CLJ 386).

G

[117] Applying the principle of the above case, I view that it is similar to the facts of the present case. These are trade secrets and proprietary information that has been developed through research and development, which are plainly of an incalculable value.

H

[118] Thus, in my mind, the order was rightly issued after taken into account circumstances of the case. Notwithstanding that the order is a less-drastic form of an Anton Piller order, I find that the plaintiffs have at all material times satisfied and fulfilled the most stringent of tests for Anton Piller orders as laid down in *Anton Piller KG v Manufacturing Processes Ltd and others* [1976] 1 All ER 779.

I

A [119] Based on the reasons stated above, I am of the considered opinion that encl 22 should be dismissed.

THE PLAINTIFFS INTER PARTE APPLICATION FOR INTERIM INJUNCTION

B [120] It is to be noted that beside the application for the delivery up order, the plaintiff also seek — an interim injunction on an ex parte basis to restrain the defendants from disclosing or using the confidential information, until trial or further order, vide prayer (3) of encl 3.

C [121] The principle of law for an injunction has been laid down by the Court of Appeal in the case of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193; [1994] 1 MLRA 454; [1995] 1 CLJ 293; [1995] 1 AMR 373 where it was held that the court must consider:

- D (a) whether there are serious issues to be tried;
- (b) whether the justice of the case lies in favour of granting the injunction; and
- E (c) whether damages would be an adequate alternative remedy.

[122] Based on the evidence presented before this court, I am of the view that the above facts and arguments clearly show that the test in *Keet Gerald* is met, in favour of granting the injunction sought.

F CONCLUSION

[123] On the grounds above stated, I find that:

- G (a) the plaintiffs have made out an extremely strong prima facie case on the merits;
- (b) the plaintiffs will suffer serious damage if the delivery-up order is not granted; and
- H (c) the defendants possess incriminating evidence and there is a serious risk that such evidence may be destroyed.

[124] On the other hand, I am of the view that:

- I (a) the facts of the case demonstrate that the order was rightly made based on the applicable principles of law;
- (b) the evidence recovered pursuant to the order further shows evidence of the defendants' wrongdoing;

- (c) that evidence shows that the defendants are involved in the ‘business’ of imitating the plaintiffs’ products by misusing the plaintiffs’ confidential information; and **A**
- (d) the defendants’ conduct plainly show that there is a real risk that they will destroy evidence to cover up their own wrongdoing and/or to prevent the truth from surfacing in court. **B**

[125] Accordingly, I allow the plaintiff’s inter parte application for interim injunction (encl 3) with costs in the cause and dismiss the defendants’ notice of application (encl 22) to set aside the ex parte order dated 3 December 2019 (encl 3) with costs of RM30,000 subject to payment of the allocator fees. **C**

Plaintiffs’ encl 3 allowed and defendants’ encl 22 dismissed.

Reported by Ahmad Ismail Illman Mohd Razali **D**

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